

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

IVAR VOITS,

Case No. 3:08-cv-00232-AC

Petitioner,

ORDER

v.

N. NOOTH,
Superintendent, SRCI,

Respondent.

Bryan E. Lessley
OFFICE OF THE FEDERAL PUBLIC DEFENDER
859 Willamette Street, Suite 200
Eugene, OR 97401

Attorney for Petitioner

Kristen E. Boyd
STATE OF OREGON
Department of Justice
1162 Court Street, NE
Salem, OR 97301

Attorney for Respondent

HERNANDEZ, District Judge:

Magistrate Judge John V. Acosta issued a Findings and Recommendation (“F&R”) [73] on October 8, 2013, recommending that the Petition for Writ of Habeas Corpus [2] be denied and that a certificate of appealability be denied because Petitioner has not made a substantial showing of the denial of a constitutional right. Petitioner filed timely objections to the Magistrate Judge’s F&R. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure.

When any party objects to any portion of the Magistrate Judge’s F&R, as here, the district court must make a de novo determination of that portion of the Magistrate Judge’s report. 28 U.S.C. § 636(b)(1); Dawson v. Marshall, 561 F.3d 930, 932 (9th Cir. 2009); United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). I have carefully considered Plaintiff’s objections and conclude that these objections do not provide a basis to modify the F&R. I have also reviewed the pertinent portions of the record de novo and find no error in the Magistrate Judge’s F&R.¹

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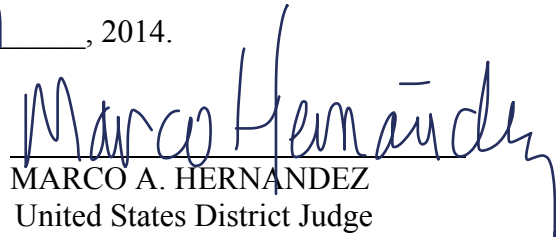
¹ On page six of the F&R, the Magistrate Judge initially refers to the gun found at the scene as being in a “cocked” position, but subsequently refers to it as being in a “de-cocked” position. F&R, pp. 6-7. The record shows that the gun was found in a “de-cocked” position. The Magistrate Judge’s single reference to the gun as being in a “cocked” position is inconsequential and does not affect my overall conclusion.

CONCLUSION

The Court ADOPTS the Magistrate Judge's F&R [73]. Accordingly, the Petition for Writ of Habeas Corpus [2] is DENIED and a certificate of appealability is DENIED because the Petitioner has not made a substantial showing of the denial of a constitutional right.

IT IS SO ORDERED.

DATED this 19 day of Feb, 2014.


MARCO A. HERNANDEZ
United States District Judge